
THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH

IN THE MATTER OF COURT
PROCEEDINGS AND COURT
OPERATIONS DURING THE
CORONAVIRUS (COVID-19)
PANDEMIC

**GENERAL ORDER
22-010**

The Court has entered numerous General Orders in response to the ongoing Coronavirus Disease (COVID-19) outbreak in Utah and throughout the nation.¹ Information about those Orders, including dates and summary descriptions are recited in General Order 22-004, entered on February 9, 2022. In total, the Court has entered at least 24 different General Orders to address continuously changing conditions in the District related to the global pandemic, enter findings relating to the Speedy Trial Act, and announce changing availability of core chambers and courthouse functions.

The Orders reflect this Court's commitment from the beginning of the pandemic to continuously monitor the available science and data, and to attempt to balance public health and safety issues with the critical constitutional functions of the federal judiciary.

Following the spring Omicron variant surge, the dramatic case decline in Utah and throughout the nation supported a general scientific consensus that we appeared, at that time, to be entering a new phase of the pandemic. Extraordinary community spread in Salt Lake County and other Utah communities over the last couple months is cause for concern, but seems to confirm that we remain (for the time being) in a phase of the pandemic in which we can more or less safely engage in most life activities provided we employ reasonable safety measures. Abundant availability of efficacious vaccines and widespread natural immunity from exposure enabled the scientific

¹ These General Orders and additional information can be found on the Court's website:
<https://www.utd.uscourts.gov/united-states-district-court-district-utah-covid-19-information-center>.

community to shift its focus from raw case counts and numbers to more nuanced criteria as a measure of risk. That data is more easily evaluated on a community level, and the Centers for Disease Control (CDC) continues to issue guidance concerning recommended activities based on a three-tier community risk assessment. The approach involves assessing county-level data and designating individual counties as Low (Green), Medium (Orange), or High (Red). In General Order 22-006, this Court adopted the same approach, and explained the Court will follow the approach suggested by the CDC.

The Court has developed and adopted an internal policy tethering the availability of court functions to the CDC's three-tier community risk model. Operations in the Orrin G. Hatch Courthouse will take into account relevant CDC guidance based on the designation for Salt Lake County together with the totality of other relevant facts and circumstances. Operations in the St. George courthouse will take into account CDC community guidance based on the relevant categorical designation for Washington County – subject to more restrictive requirements, if any, imposed by the State of Utah or Washington County.

Except as provided below, this means that restrictions on hearings, trials, grand jury operations, reentry and specialty courts, and courthouse functions imposed by the Court's previous pandemic-related General Orders are now largely lifted.

I. Speedy Trial Act Findings

Notwithstanding the evolution of the global pandemic and the revised approach suggested by the scientific community, the nationwide emergency designation adopted by the President of the United States in 2020 remains in place. Utah and the nation remain in the midst of the most serious global pandemic in over a century. The Judicial Conference of the United States has found that emergency conditions due to the national COVID-19 crisis have affected and continue to materially affect the operations of the federal courts. The CDC continues to issue and modify guidance to combat the spread of the disease, and to promote the health and well-being of the nation.

Changes in testing make case count data less helpful than it was at earlier stages of the pandemic. Nevertheless, nearly 540 million COVID-19 cases have

been confirmed globally, resulting in over 6.3 million deaths. It's likely that those numbers significantly underestimate the actual cases and deaths worldwide. There are nationwide now nearly 87 million confirmed cases of Americans infected with COVID-19, and over 1 million confirmed deaths. Nearly 5,000 Utahns have died and over 35,000 hospitalized as a product of nearly 1 million cases in the State. And even as case counts increase and decrease in the District, additional variants continue to be identified around the globe. It is impossible to know when or how the District will be affected by those variants, but two years of experience during the pandemic suggest that impact on public health and court operations may be significant.

Particularly relevant to judicial operations in the District of Utah, local jails with whom the United States Marshal Service contracts for pretrial and post-sentencing detention continue to experience case surges requiring quarantine of federal inmates. The jails remain particularly susceptible to rapid spread of the disease, which causes the availability of defendants for in-person hearings to constantly change. The vast majority of federal inmates held in the local jails in the District have for at least the last year voluntarily exercised their right under the emergency provisions of the CARES Act to waive their right to appear in person for critical hearings. This reflects the continuing reality that transportation in and out of the jail facilities presents health risks to our detained defendants and those servicing the local jails during the pandemic. In-person hearings also expose our defendants to elevated risk of unwanted quarantine and other consequences the defendants want to avoid.

Moreover, even as the Court modifies the availability of in-person hearings and jury trials under the revised CDC guidance, the last two years of greatly reduced trial availability have generated a significant backlog. Despite its best efforts to date, the Court cannot possibly fully accommodate the immediate demand for jury trials both in civil and criminal cases. The Court is actively working to increase jury trial capacity, with a focus on criminal cases and attendant Speedy Trial Act issues. As a matter of practical necessity, not all criminal defendants in custody who wish to exercise their Speedy Trial rights can be provided immediate jury trial dates. Since the Court began making jury trials available on

a limited basis, criminal trials have enjoyed priority. For several months, the Court conducted only criminal jury trials to ensure that all detained defendants seeking trial could get dates. All detained defendants were given possible dates for trial before the Court resumed civil jury trials. Under the Court's present three-tiered community risk assessment approach, criminal jury trials will continue to receive priority with the presiding judge in each case, and dates will be provided for trial as soon as reasonably practicable.

Taking into account all of this, as well as the available and relevant COVID-related data, including the numbers of daily new cases and hospitalizations, test positivity rates, ICU capacity in Utah hospitals, the availability of vaccines and the vaccination rates, the introduction and spread of several variants of the COVID-19 virus with unknown implications, as well as enhanced treatment capabilities for those infected with COVID-19, the Court concludes the pandemic continues to present an ongoing health emergency in Utah.

1. For the reasons stated above relating to the ongoing COVID-19 threat, and for the reasons previously discussed in General Orders 20-009, 2020-010, 20-011, 20-012, 20-017, 20-021, 20-026, 20-029, 20-030, 21-001, 21-003, 21-007, 21-009, 21-012, 21-015, 22-002, 22-004, and 22-006, including the procedural and practical challenges to seating a jury in the midst of the COVID-19 pandemic the period of time between June 30, 2022, and August 31, 2022, is hereby **EXCLUDED** from the respective speedy trial calculations for both the return of an indictment and the commencement of trial within the District, pursuant to 18 U.S.C. § 3161(h)(7)(A). An "ends of justice" exclusion under the Speedy Trial Act is disfavored and "meant to be a rarely used tool for those cases demanding more flexible treatment."² The Court nevertheless concludes an "ends of justice" finding is necessary and appropriate in the District of Utah at this time. The ongoing health emergency arising from the COVID-19 pandemic continues to demand modifications to court practices to protect public health. Courts and court operations are necessarily social operations, involving many people.

² *United States v. Toombs*, 574 F.3d 1262, 1269 (10th Cir. 2009).

Mindful of the Court's constitutional responsibility to continue providing mission-critical functions of the federal judiciary – even during the COVID-19 outbreak – the need to protect the public health in the midst of the ongoing deadly COVID-19 pandemic outweighs the important rights of individual defendants and the public to speedy trials at this time. The Court reaches this conclusion after carefully balancing the factors set forth in 18 U.S.C. § 3161(h)(7)(B). Specifically, the Court finds that the exclusion of time through August 31, 2022, from the respective speedy trial periods, is necessary to protect the health and safety of jurors and prospective jurors, court staff and employees, criminal defendants, counsel, law enforcement personnel, and the public.

In addition, in-custody defendants in this District are held at local jails under the direct control of the State of Utah and individual counties. As noted above, the Court continues to experience restrictions on access to federal defendants during this outbreak. Travel restrictions further impair the ability of counsel and witnesses to appear for Grand Jury proceedings or trial.

Beyond that, the health risks associated with trial remain acute in Utah and throughout the nation. Trial requires that jurors, counsel, parties, witnesses, court personnel, and judges all be present in the courtroom in relatively close proximity. The Court will provide as many trial dates as possible to defendants seeking trials. But empaneling and hosting multiple criminal juries, including facilitating jury selection and jury deliberations, all with due regard for health and safety, is simply not possible in the physical facilities available to the court - especially when Salt Lake County is in the CDC Red category for community danger associated with the COVID-19 pandemic, as it is at the time this General Order is entered. Video and audio conferencing, used for hearings, are not available for criminal jury trials. Counsel's ability to adequately prepare for trial, including locating

and consulting with witnesses, and defense counsel's ability to effectively confer with defendants, are also greatly diminished under the present circumstances.

2. For the reasons stated above, those provisions in General Order 22-006 and General Order 20-010 relating to attorney-client Privilege and Pretrial Services Reports are **EXTENDED** through August 31, 2022. The attorney-client privilege is presumptively preserved for defense counsel and in-custody defendants when using electronic communication technology provided by local detention facilities.

Judges are encouraged to enter speedy trial orders in the cases over which they preside. Judges presiding over criminal proceedings may take such actions consistent with this Order as may be lawful and appropriate to ensure the fairness of the proceedings and preserve the rights of the parties – particularly where defendants are detained pending trial. Any motion by a criminal defendant seeking an exception to any provision of this Order should be directed to the assigned judge.

II. Other Court Business

For the reasons stated above, it is **HEREBY ORDERED that effective July 1, 2022 – subject to the Court's internal practices depending on the CDC's fluctuating community risk level findings:**

1. **Grand Jury** – Grand Jury proceedings may resume without restriction.
2. **Jury Trials** – Subject to the capacity of the Court's Jury Administrator's office, presiding judges in each case may set matters for trial as their calendars permit. Criminal cases should continue to receive priority.
3. **Hearings and Bench Trials** – Judges may schedule civil hearings and bench trials to proceed in-person or remotely, as the presiding judge in each case

sees fit. Given the Court's findings here and in related CARES Act authorization orders, judges may schedule hearings in criminal cases, including critical hearings, in-person or remotely, as appropriate under the emergency provisions of the CARES Act.

4. **Search Warrants and Title III Applications** – Counsel seeking search warrants and other applications (including, among other things, trap/trace and pen registers), as well as new criminal complaints for most cases, should submit related materials via email to: utd_mj_duty@utd.uscourts.gov for the duty magistrate judge.

In matters arising in the Southern Region, with St. George location designations, these materials should be submitted via email to: utdecf_kohler@utd.uscourts.gov for Magistrate Judge Kohler.

A courtroom deputy will then communicate with the sender to arrange the presentation and resolution of these matters by the appropriate judge.

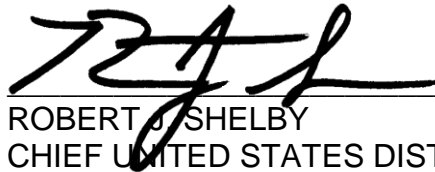
Counsel seeking to present Title III applications should contact Chief Judge Shelby's courtroom deputy, Mary Jane McNamee, for direction on presentation of materials.

5. **CVB and Reentry Courts** – The CVB calendar and Specialty/Reentry Courts may resume operations in the manner designated by the presiding judge for each court.
6. **Public and Bar-Related Functions** – Jury trials will continue to require many of the open spaces in the Orrin G. Hatch Courthouse until the current backlog of trials is significantly reduced. To ensure capacity for jury trials, all requests for public and bar-related functions in the Courthouse must be submitted to the Clerk of Court and approved by Chief Judge Shelby until further notice.

7. **Southern Region Operations in St. George, Utah** - The Court's Southern Region operations are housed in space leased within the State of Utah St. George Courthouse. That facility and its operation are controlled by the State of Utah. Among other things, this means the availability of in-person Southern Region proceedings are subject to decisions by the State of Utah and Washington County. As the resident United States District Judge in St. George, Judge David Nuffer is granted emergency authority to promulgate rules and procedures for Southern Region proceedings consistent with State of Utah and Washington County directives and COVID-19 conditions within the Southern Region.

SO ORDERED this 28th day of June, 2022.

BY THE COURT:



Handwritten signature of Robert J. Shelby in black ink, written over a horizontal line.

ROBERT J. SHELBY
CHIEF UNITED STATES DISTRICT JUDGE